

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7104 of 1997

NAGINBHAI SOMABHAI

Versus

COMPETENT AUTHORITY & DY COLLECTOR

Appearance:

MR YN RAVANI for Petitioners

MR DN PATEL, ASSTT. GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of Order: 28/11/97

ORAL ORDER

1. By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated June 30, 1997 passed by competent authority and Deputy Collector, Urban Land Ceiling Department - Surat, by which 9308 sq. mtrs. of land belonging to the petitioner is declared to be excess vacant land u/s 8 of the Urban Land (Ceiling & Regulations) Act, 1976 (' the Act ' for short). The petitioners have also prayed to quash and set aside the order dated May 16, 1997 rendered by Urban Land Ceiling Tribunal in Appeal No. Surat/74/93, by which order dated June 30, 1997 passed by the Competent Authority and Deputy Collector, Urban Land Ceiling Department, Surat. is confirmed.

2. Deceased Somabhai Rambhai who was father of petitioner No.10 was holding lands, particulars of the which are as under :-

S.No. Description of land Measurement

1. Survey No. 278 6576 sq.mtrs.

Village Katargam

Dist. Surat

2. Survey No. 282 2732 sq.mtrs.

Village Katargam

Dist. Surat

3. Survey No. 489 4755 sq.mtrs.

Village Katargam

Dist. Surat

3. According to the petitioners, the land was given to deceased Somabhai by the Government regarding which entry no. 2226 was made on October 3, 1960. Somabhai Ramabhai expired on April 15, 1961 and it is the case of the petitioners that, as petitioners no. 1 to 9 were minors, the lands were mutated in the name of Laxmiben i.e. petitioner no. 10 by entry no. 2471 which was effected on December 14, 1961. On coming into force of the Act, the petitioner no.10 submitted a statement u/s 6 (1) of the Act before the respondent no.1 on August 14, 1976. While statement filed u/s 6 of the Act was under consideration, the petitioner no.10 made an application u/s 20 of the Act and prayed the State Government to exempt survey no. 489 situated at village Katargam from the provisions of Chapter III of the Act. The State Government by an order dated February 19, 1980, granted exemption as prayed for by the petitioner no.10. However, the exemption which was granted u/s 20 of the Act was subsequently revoked by the State Government vide order dated November 29, 1984. The petitioner no.10 again made an application u/s 20 of the Act and prayed to exempt survey no. 489 situated at village Katargam from the provisions of Chapter III of the Act. The State Government granted exemption by order dated August 30, 1991. Thereafter, the statement filed by the petitioner no.10 u/s 6 of the Act was processed by the competent authority i.e. the respondent no.1.

4. The respondent no.1, after taking into consideration relevant material, declared 9308 sq. mtrs. of land as excess vacant land by order dated June 30, 1992, which is produced at Annexure - C to the petition. Feeling aggrieved by the said order, the petitioner no.10 preferred appeal u/s 33 of the Act before the Urban Land Ceiling Tribunal. The tribunal has dismissed the appeal by order dated May 16, 1997, giving rise to the present appeal. The order passed by the Tribunal is produced by the petitioner at Annexure - E to the petition.

5. Learned counsel for the petitioners submitted that, while determining the excess vacant land under the Act, the competent authority has taken into consideration the condition no.5 stipulated in order dated August 30, 1991 passed u/s 20 of the Act, by which the petitioner no.10 was not permitted to hold the land within the ceiling limits prescribed by section 4 of the Act and as such, a condition could not have been laid down while exercising powers u/s 20 of the Act, the impugned orders should be set aside. It was pleaded that, before passing the impugned orders, the petitioners no. 1 to 9 who have interest in the ownership and / or possession of the lands in question, were not heard and therefore, the petition should be accepted. What was highlighted by the learned counsel for the petitioners was that the contention that the lands are not vacant lands within the meaning of section 2(q) of the Act, is not considered either by the competent authority or by the appellate authority and therefore, the prayers made in the petition should be granted.

6. Mr D.N. Patel, learned counsel for the respondents submitted that, petitioner no.10 had waived her right to hold the land within the ceiling limits contemplated by section 4 of the Act and therefore, the respondent no.1 was justified in placing reliance on the said condition while determining excess vacant land within the meaning of the Act. It was stressed that the petitioner no.10 did not produce sufficient evidence before the competent authority to indicate that petitioners no. 1 to 9 had also right, title and interest in the lands and therefore, the orders which are challenged in the petition should not be set aside on the ground that interested persons were not heard. Learned counsel for the respondents submitted that no material was placed by the petitioner no.10 to establish her claim that the lands were mainly used for the purpose of agriculture and therefore, the petition should be dismissed.

7. In view of rival submissions advanced at the Bar, the question which falls for consideration of the Court is whether the State Government can impose a condition which has effect of depriving the holder of land of benefits conferred by other provisions of the Act while exercising powers u/s 20 of the Act ? Section - 20 of the Act empowers the State Government to exempt any vacant land in public interest and also where such

exemption is considered to be necessary to avoid undue hardship to any person. It is true that section empowers the State Government to grant exemption to vacant land from the provision of Chapter III of the Act, subject to conditions. However, the competent authority cannot impose a condition which is contrary to the provisions of section 4 of the Act. Section 4 of the Act itself enables a holder of the land to hold land within the ceiling limits specified therein. Therefore, while granting an exemption u/s 20 of the Act, a condition should not have been stipulated that petitioner No.10 would not be entitled to hold one unit i.e. 1500 sq. mtrs. of lands which she is otherwise entitled to hold u/s 4 of the Act. Though the State Government is empowered to grant exemption subject to conditions, the condition which may be imposed by the State Government should be relevant to the object for which such power is conferred and purpose for which exemption is to be granted. A condition which frustrates other provisions of the Act cannot be laid down while exercising powers u/s 20 of the Act. While exempting any vacant land either in public interest or with a view to avoiding undue hardship to any person, the authority should not deprive the holder of the land of the benefits which are otherwise available under the Act. The submission that the petitioner no.10 had waived right conferred on her by section 4 of the Act and therefore, the competent authority was justified in taking into consideration 1500 sq. mtrs. of lands while determining excess vacant land, cannot be upheld, because such an unreasonable condition should not have been stipulated by the State Government at the time of exercising powers u/s 20 of the Act.

8. As the competent authorities under the Act have taken into consideration condition no.5 which is held to have been imposed unreasonably by the State Government while granting exemption u/s 20 of the Act, I am of the view that the impugned orders must be considered as illegal and should be set aside. The grievance made by the petitioners is that the petitioner no.10 had produced sufficient evidence before the competent authority as well as appellate authority to indicate that lands in question were mainly used for the purpose of agriculture, also deserves to be considered. A bare reading of the appellate order makes it abundantly clear that the plea that the disputed lands are not vacant lands within the meaning of section 2(q) of the Act was specifically raised by petitioner No.10, but it is not considered by the appellate authority at all.

9. On the facts and in the circumstances of the case, I am of the view that the matter deserves to be remitted to the respondent no.1 for fresh consideration.

10. For the foregoing reasons, the petition partly succeeds. The order dated June 30, 1992 passed by the competent authority and Deputy Collector, Urban Land Ceiling Department, Surat, which is produced at Annexure - C to the petition as well as the appellate order passed by the Urban Land Ceiling Tribunal, Ahmedabad, which is produced at Annexure - E to the petition are hereby set aside and quashed. The matter is remitted to the competent authority and Deputy Collector, Urban Land Ceiling Department, Surat for fresh consideration. While determining excess land belonging to the petitioner no.10, the respondent no.1 shall not take into consideration the condition no.5 which was stipulated in order dated August 30, 1991 passed by the state Government u/s 20 of the Act, by which it was agreed by the petitioner no.10 that she would not claim land within the ceiling limits, as prescribed in section 4 of the Act. The petitioner no.10 would be entitled to produce relevant evidence before the competent authority to establish her claim that the disputed lands are not vacant lands within the meaning of section 2 (q) of the Act and are not liable to be declared as excess vacant land. The petitioner no.10 shall also be entitled to produce relevant material before the competent authority to indicate that petitioners no. 1 to 9 have also right, title and interest in the lands and that they should be heard before passing the order. The material which shall be placed by the petitioner no.10 shall be considered by the competent authority on merits and in accordance with law. Rule is made absolute accordingly with no orders as to costs. Direct service is permitted.

NOVEMBER 27, 1997 [J.M.PANCHAL, J.]

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